

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rules I through IV and the amendment	)	AMENDMENT, AND REPEAL
of ARM 37.8.102, 37.8.103, 37.8.104,	)	
37.8.109, 37.8.116, 37.8.126, 37.8.127,	)	
37.8.128, 37.8.129, 37.8.301, 37.8.801,	)	
37.8.804, and 37.8.816 and the repeal	)	
of 37.8.106 pertaining to vital statistics	)	
	)	

TO: All Interested Persons

1. On November 8, 2007, the Department of Public Health and Human Services published MAR Notice No. 37-421 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules, at page 1768 of the 2007 Montana Administrative Register, issue number 21.

2. The department has amended ARM 37.8.102, 37.8.103, 37.8.104, 37.8.109, 37.8.126, 37.8.127, 37.8.128, 37.8.129, 37.8.301, 37.8.801, 37.8.804, and 37.8.816, and repealed ARM 37.8.106 as proposed.

3. The department has adopted new Rule I [37.8.307] as proposed.

4. The department is not amending ARM 37.8.116 as proposed.

5. The department has adopted and amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE II [37.8.107] AMENDMENT OF VITAL RECORD

(1) and (2) remain as proposed.

(3) Except in those cases specified in (4) and (5), a vital record may only be amended by an order from a ~~Montana district~~ court with appropriate jurisdiction, the original data provider, or those persons authorized by 50-15-121(1), MCA.

(4) The demographic information of a death record may be amended by the next of kin, the informant listed on the death certificate, the funeral director, or the person in charge of the final disposition of the body. If any information provided by the informant is disputed after the record has been filed, changes to the demographic data must be made pursuant to an order from a ~~Montana district~~ court with appropriate jurisdiction.

(5) Applications to amend the medical certification of cause of death shall only be made by the physician who provided the medical certification, or a coroner or state medical examiner if the coroner or medical examiner assumed responsibility for the case. If the cause of death certification is disputed, changes to the cause of

death certification must be made pursuant to an order from a ~~Montana district~~ court with appropriate jurisdiction.

(6) and (7) remain as proposed.

(8) Any subsequent change to information previously altered through this process requires an order from a ~~Montana district~~ court with appropriate jurisdiction.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, 50-15-403, MCA

### RULE III [37.8.108] AMENDMENT PROCESS AND DOCUMENT REQUIREMENTS

(1) through (3) remain as proposed.

(4) In cases other than those cited in ~~[RULE IV]~~ ARM 37.8.311, the department may amend any portion of a vital record if a requestor submits a correction affidavit.

(a) The correction affidavit must include the following information:

(i) the name of the registrant or registrants appearing on the record;

(ii) the date and place of birth, birth resulting in a stillbirth, death, or fetal death;

(iii) the specific items on the record that are to be changed, including the information as presently shown and the proposed corrected information;

(iv) the relationship of the affiant to the registrant;

(v) certification by the affiant that all affected parties concur with the changes; and

(vi) supporting documentation provided by the affiant as irrefutable proof that the amendment(s) are correct.

(b) If not all parties agree to the changes, an order from a ~~Montana district~~ court with appropriate jurisdiction is required.

(5) through (7) remain as proposed.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA

IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-208, 50-15-223, MCA

### RULE IV [37.8.311] ADOPTIONS, NAME CHANGES, AND SEX CHANGES

(1) through (3) remain as proposed.

(4) Except in the cases specified in ~~[RULE III]~~ ARM 37.8.108, the amendment of a registrant's given name or surname on a birth certificate may be made only if the department receives a certified copy of an order from a ~~Montana district~~ court with appropriate jurisdiction. The court order that directs the name change must include the registrant's name as it appears on the certificate, the registrant's date of birth, the county of birth, if available, and information sufficient to locate and identify the record to be altered. If the court order directs the issuance of a new certificate, the record will not show amendments, and the new certificate will not indicate on its face that it was altered. The procedure to add a first and/or middle name to a birth record that is more than one year old, as in the case when a child is not named at birth, is regulated under ~~[RULE III]~~ ARM 37.8.108.

(5) The sex of a registrant as cited on a certificate may be amended only if

the department receives a certified copy of an order from a ~~Montana~~ district court with appropriate jurisdiction indicating that the sex of an individual born in Montana has been changed by surgical procedure. The order must contain sufficient information for the department to locate the record. If the registrant's name is also to be changed, the court order must indicate the full name of the registrant as it appears on the original birth certificate and the full name to which it is to be altered. If the order from the court directs the issuance of a new certificate that does not show amendments, the new certificate will not indicate on its face that it was altered. If the sex of an individual was listed incorrectly on the original certificate, refer to ~~[RULE III]~~ ARM 37.8.108.

AUTH: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA  
IMP: 50-15-102, 50-15-103, 50-15-204, 50-15-223, MCA

#### 37.8.126 ACCESS TO RECORDS

(1) through (5) remain as proposed.

(6) A certified copy of certificate of birth that resulted in a stillbirth may only be issued to the following:

- (a) either parent if listed on the certificate; or
- (b) those persons listed in 50-15-121(1), MCA, upon receipt of an order from a ~~Montana~~ district court with appropriate jurisdiction.

(7) and (8) remain as proposed.

AUTH: 50-15-103, 50-15-121, 50-15-122, MCA  
IMP: 50-15-103, 50-15-121, 50-15-122, MCA

6. The department has thoroughly considered all commentary received. The comments received and the department's response follows:

The department received numerous comments, all of which opposed the proposed fee increase in ARM 37.8.116. After considering the comments, the department has determined more work needs to be done to address potential conflicts in law governing the county and state functions.

Consequently, the department is striking the proposed changes to ARM 37.8.116. The department will work with interested parties to:

- clarify and define the applicability of fees and to set the fees for all vital record issuing agencies in the state as required in 50-15-111, MCA;
- specify how the fees will be distributed between the county and the state; and
- equalize the fees paid by a user, whether the service is provided in a county or the state Office of Vital Statistics.

The department made changes to new Rules II [37.8.107], III [37.8.108], IV [37.8.311], and ARM 37.8.126, to allow court orders from jurisdictions outside of Montana. Montana law in 50-15-223, MCA, allows the department to accept

legitimate out-of-state court orders for amending, changing, and replacing birth certificates after adoptions or determinations of paternity. Also under 50-15-122, MCA, the department may accept appropriate court orders from other states for access to Montana's vital records.

/s/ Michelle Maltese  
Rule Reviewer

/s/ Joan Miles  
Director, Public Health and  
Human Services

Certified to the Secretary of State December 10, 2007.